No. 10-434

Supreme Court, U.S.
FILED
DEC 29 2010
OFFICE OF THE CLERK

In The
Supreme Court of the United States

CITY OF SANTA ROSA; RICHARD CELLI, Police Officer; TRAVIS MENKE, Police Officer; and PATRICIA MANN, Police Officer of the Santa Rosa Police Department,

Petitioners,

v.

PATRICIA DESANTIS, Guardian Ad Litem; RICHARD DESANTIS, deceased, and as Guardian Ad Litem; DANI DESANTIS, a minor; TIMOTHY FARRELL, a minor; ADRIANNE DESANTIS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

JOHN H. SCOTT (SBN: 72578)
Counsel of Record for All Respondents
SCOTT LAW FIRM
1388 Sutter Street, Suite 715
San Francisco, CA 94109
Telephone: (415) 561-9601
Facsimile: (415) 561-9609
john@scottlawfirm.net

ERIC M. SAFIRE (SBN: 98706)
LAW OFFICES OF ERIC M. SAFIRE
2431 Fillmore Street
San Francisco, CA 94115
Telephone: (415) 292-1940
Facsimile: (415) 292-1946
eric@safirelaw.com

Counsel for Respondents Patricia DeSantis, Richard DeSantis, Dani DeSantis, and Timothy Farrell

JOHN L. BURRIS (SBN: 69888)
BENJAMIN NISENBAUM (SBN: 222173)
LAW OFFICES OF JOHN L. BURRIS
7677 Oakport Street, Suite 1120
Oakland, CA 94621
Telephone: (510) 839-5200
Facsimile: (510) 839-3882
john.burris@johnburrislaw.com
bnisenbaum@hotmail.com

Counsel for Respondent Adrianne DeSantis

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Can qualified immunity be decided as a matter of law where genuine issues of fact are in dispute regarding whether an officer reasonably believes a suspect is armed and poses an imminent threat of great bodily injury?

2. If a trier of fact finds that petitioners did not reasonably believe decedent was armed, are petitioners entitled to qualified immunity as a matter of law if he was wounded and running toward them?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
Factual Background	1
Opinions Below	6
REASONS FOR DENYING THE WRIT	8
I. MISREPRESENTATIONS OF MATERIAL FACTS	9
II. CONSIDERATION OF OTHER FORCE ALTERNATIVES MAY BE PROPER WHERE A SUSPECT IS UNARMED	10
III. THERE IS NOT A CONFLICT BETWEEN THE CIRCUITS REGARDING THE USE OF DEADLY FORCE	11
IV. THE COURT DID NOT DEVIATE FROM WELL ESTABLISHED PRECEDENT REGARDING THE FOURTEENTH AMENDMENT CLAIM	15
CONCLUSION	17

TABLE OF AUTHORITIES

Page

CASES

Adams v. Speers, 473 F.3d 989 (9th Cir. 2007) 14

Behrens v. Pelletier, 516 U.S. 299 (1996) 8

County of Sacramento v. Lewis, 523 U.S. 833 (1998) 15, 16

Deorle v. Rutherford, 272 F.3d 1272 (9th Cir. 2001), *cert. denied*, 536 U.S. 958 (2002) 10

Elliott v. Leavitt, 99 F.3d 640 (4th Cir. 1996) 14

Graham v. O'Connor, 490 U.S. 386 (1989) 12

Johnson v. Jones, 515 U.S. 304 (1995) 8

Moreland v. Las Vegas Metro Police Dept., 159 F.3d 365 (9th Cir. 1998) 16

Murray-Ruhl v. Passinault, 246 Fed.Appx. 338, 2007 WL 2478584 (6th Cir. 2007) 13

Porter v. Osborn, 546 F.3d 1131 (9th Cir. 2008) 15, 16

Scott v. Henrich, 39 F.3d 912 (9th Cir. 1994) 11

Sigley v. City of Parma Heights, 437 F.3d 527 (6th Cir. 2006) 13

Smith v. City of Hemet, 394 F.3d 689 (9th Cir. 2005) 11

Smith v. Fretland, 954 F.2d 343 (6th Cir. 1992) 12, 13

Tennessee v. Garner, 471 U.S. 1 (1985) 12, 14

Vaughan v. Cox, 343 F.3d 1323 (11th Cir. 2003), *on remand from* 536 U.S. 953, 122 S.Ct. 2653, 153 L.Ed.2d 830 (2002) 14

STATEMENT OF THE CASE

Factual Background

In a fact-specific analysis the district court denied cross-motions for summary adjudication of the Fourth Amendment claims. The district court summarized the facts as follows:

On April 9, 2007, Patricia DeSantis called 911 and advised the dispatcher that her husband, Richard DeSantis, was firing shots into the ceiling of their home. She further advised the dispatcher that Mr. DeSantis was in a manic phase of a bipolar episode and that he was having paranoid delusions that there were people in the attic. Mrs. DeSantis told the dispatcher that she was in the home with her two minor children, ages 2 and 10.

Mrs. DeSantis instructed her son, Timothy Farrell, to inform the dispatcher that she had disarmed Mr. DeSantis, but she does not know if Farrell actually conveyed this information. Mrs. DeSantis led Mr. DeSantis outside. Mr. DeSantis was wearing only jeans and socks. He did not have on a shirt or shoes. Mrs. DeSantis yelled to the police officers outside her home that Mr. DeSantis was having mental health issues and told them that the gun was in the house.

Sergeant Richard Celli, Sergeant Jerry Soares and Santa Rosa Police Officers Travis Menke, Patricia Mann, Daniel Jones, and Jerry Ellsworth responded to the scene. The officers were advised that a man was firing a gun in a residence and that his wife and

children were in the house. Officer Mann testified that the dispatcher informed them that Mr. DeSantis had a mental disorder. Officer Jones remembers Mrs. DeSantis yelling out that Mr. DeSantis had a mental illness and was in crisis.

When Sergeant Celli arrived at the scene, he parked right behind Officer Jones. Sergeant Soares pulled in and parked right behind Sergeant Celli. Sergeant Celli had a rifle and a Taser in the trunk of his car. He chose to take his rifle out, and not the Taser, because he was aware that Mr. DeSantis was shooting in the residence. Sergeant Celli met briefly with Sergeant Soares and Officer Jones by their cars. Sergeant Celli estimated that the meeting lasted approximately ten seconds. Sergeant Soares informed them that he had a Sage, a "less lethal" weapon that fires a 37-millimeter projectile polyurethane grommet.

When he came to the southeast corner of the driveway to the DeSantis' home, Sergeant Celli observed Mr. DeSantis standing outside, just off the steps to his residence, and observed Mrs. DeSantis holding a two-year old child in her arms on the steps. Sergeant Celli then observed Officers Menke, Mann and Elsworth walking towards the southwest corner of the driveway. Although it was dark, Sergeant Celli "could see the scene, and Mr. DeSantis could see [him]." Officer Jones testified that the lighting at the scene "was good." There was a streetlight near the driveway and there was light emanating from the DeSantis' home. Sergeant Celli was approximately eighteen to twenty yards from the front of the

DeSantis' home. Sergeant Celli, Sergeant Soares and Officer Jones were standing on the right side of the driveway and Officers Menke, Mann and Ellsworth were standing on the left side of the driveway. The two groups were standing approximately fifteen to twenty feet apart. Officer Ellsworth had his K-9 dog with him.

Mr. DeSantis was wearing loose fitting jeans, but he was not wearing any shirt or shoes. Sergeant Celli could see Mr. DeSantis' hands and observed that he was not holding anything. There were no weapons sticking out of the top of Mr. DeSantis' waistband. Mr. DeSantis took three or four steps away from the front of the house and toward Officer Menke. Officer Menke ordered Mr. DeSantis to put his knees to the ground. Mr. DeSantis complied and eventually placed both of his knees on the ground. This took "several seconds." When Officer Menke was giving commands to Mr. DeSantis, the other officers had their guns pointed towards Mr. DeSantis. Officer Menke told Mr. DeSantis to keep his hands in the air and then to put his hands on the ground in front of him. Mr. DeSantis complied after repeated commands.

Sergeant Celli had authority to order Officer Ellsworth to release the canine upon Mr. DeSantis, but he did not do so at this point because Mr. DeSantis had been complying, albeit reluctantly. Sergeant Celli did not consider the Taser to be a viable option at that point either because Mr. DeSantis was too far away at approximately 16 to 18 yards. In response to an order to lay down on the

ground, Mr. DeSantis then bent forward, rolled his hips to the ground, but then immediately came back up to a kneeling position. Sergeant Celli still did not believe it would have been appropriate to use the canine on Mr. DeSantis at this point.

Mr. DeSantis then looked towards Sergeant Celli, looked towards his wife, looked at Officer Menke, and then ran. Officer Celli testified that Mr. DeSantis "took off like he left the sprinter blocks." However, Mrs. DeSantis testified that when Mr. DeSantis initially got up, he started walking towards the officers. **None of the officers at the scene reported seeing anything in Mr. DeSantis' hands.** Sergeant Soares fired the less lethal Sage weapon at Mr. DeSantis after he ran approximately seven to ten yards. When Sergeant Soares shot Mr. DeSantis with the Sage, Mr. DeSantis was approximately ten to twelve yards from Sergeant Soares and ten to fifteen yards from Officer Menke. Mr. DeSantis was a little closer to Sergeant Soares than to Officer Menke.

Mr. DeSantis tilted his body to the right briefly when he was hit with the Sage weapon, and then continued running towards Officers Menke and Mann. Mr. DeSantis took another two to four steps, moving three to four yards. When Sergeant Celli estimated that Mr. DeSantis was now six to eight yards away from Officer Menke, he shot Mr. DeSantis. **Sergeant Celli could still see that Mr. DeSantis had nothing in his hands.** Sergeant Celli was concerned that Mr. DeSantis would kill Officers Menke and Mann by either pulling out a

weapon or taking one of theirs. After he was shot, Mr. DeSantis took another step or two. Two more shots were fired at Mr. DeSantis, one by Officer Menke and one by Officer Mann. **About one and a half minutes passed between when Sergeant Celli first saw DeSantis and when he shot him. DeSantis died on the scene.**

During the incident, Sergeant Celli had a baton on him. There were at least two other officers with a Taser and Officer Ellsworth had a police canine with him. (Petition, Appendix B, pp. 12a-18a)

The Ninth Circuit distilled the facts as follows:

> Both Patricia DeSantis and the dispatcher informed the police that Richard was mentally ill. Patricia also informed the officers that Richard was unarmed and the gun was in the house. The officers could see Richard's hands at all times, and could see he was not hiding a weapon in his waistband. Richard never threatened to inflict, and did not inflict, harm to his family or to the officers. He was outnumbered six to one by police officers. When Sergeant Celli shot him, Richard was at least ten yards away from the nearest officer, and was walking towards them with a shattered right arm. None of the officers ever warned Richard that they would shoot him if he did not stop. The six officers could have used the Sage weapon again, or their Tasers, or their batons, or the dog.

(Petition, Appendix A, pp. 3a-4a)

Opinions Below

In an unpublished Memorandum the Ninth Circuit held factual disputes precluded summary judgment on qualified immunity. "Taken in the light most favorable to the Plaintiffs, **the facts in this case raise a triable issue of fact as to whether the officers who fired lethal shots at Richard DeSantis used excessive force.**" (Petition, Appendix A, p. 4a)

The Ninth Circuit affirmed the district court's ruling. The district court's order included a thorough analysis of the totality of the circumstances confronting the officers.

> **Upon reviewing the record in this case, the Court concludes that it cannot grant summary judgment for either party on this issue.**
>
> . . . .
>
> **On the other hand, viewing the evidence and all reasonable inferences in the light most favorable to Plaintiffs, a reasonable juror could find that the amount of force used was unreasonable.** Mrs. DeSantis informed the dispatcher and the officers on the scene that Mr. DeSantis did not have a gun anymore. By shooting up into the empty attic, Mr. DeSantis did not inflict, or threaten to inflict, serious physical harm. Mr. DeSantis never threatened his family members or any officers with the gun. Mr. DeSantis was bipolar and was in mental

> crisis. Mr. DeSantis was outnumbered by the officers on the scene by six to one. The officers were all armed, at least two officers had Tasers, one officer has a Sage, and another officer had his K-9 dog with him. Although Sergeant Celli initially did not order the dog or the Tasers to be used because Mr. DeSantis had been compliant and was too far away for the Taser, those circumstances changed when Mr. DeSantis started running towards the officers. When Sergeant Celli shot Mr. DeSantis, he was still six to nine yards away from Officers Menke and Mann. Mr. DeSantis' hands were visible and he did not have a weapon in them. There is no evidence that any of the officers warned Mr. DeSantis that he would be shot if he kept running towards the officers. **Based on the totality of the circumstances, the Court finds that a reasonable juror could easily find that the use of deadly force against Mr. DeSantis was not reasonable.** (Petition, Appendix B at p. 26a)

The district court applied qualified-immunity standards to the facts and, drawing inferences in plaintiffs' favor, denied qualified immunity.

> Again, viewing the facts in the light most favorable to the Moving Plaintiffs, Mr. DeSantis had not threatened any of his family members or any officers with a gun, he was mentally disturbed, he was not given any warning of the imminent use of force, let alone deadly force, and he did not present an objectively reasonable immediate threat of

> death or of serious injury to the officers at the time of the shooting. Moreover, the Court finds it significant that several alternative methods of capturing or subduing Mr. DeSantis were available. As Mr. DeSantis came closer, the Tasers could have been used. Moreover, the canine could have been used to stop him. With no weapon, Mr. DeSantis did not pose a serious threat of killing one of the officers until he reached them and was able to wrestle a gun away. Yet, Mr. DeSantis was shot when he was still almost 20 feet away from the closest officer. In light of such circumstances, under clearly established law, a reasonable officer could not have believed that using deadly force against Mr. DeSantis was lawful. (Petition, Appendix B at pp. 27a-28a)

REASONS FOR DENYING THE WRIT

The Ninth Circuit and district court, in unpublished decisions, denied summary judgment because a jury should determine whether defendants reasonably believed DeSantis was armed and therefore posed an imminent threat. It is well established that qualified immunity cannot be granted where the record sets forth a genuine issue of fact for trial. *Johnson v. Jones*, 515 U.S. 304 (1995); *Behrens v. Pelletier*, 516 U.S. 299 (1996).

Petitioners represent to this Court that they are entitled to qualified immunity because the officers

believed decedent was armed. This material fact is in dispute as determined by both the trial court and the Ninth Circuit.

This is *not* a case where there is a Circuit split or deviation from legal standards. United States Supreme Court Rule 10. Nor is it a case where any court cited an improper rule of law. Instead, petitioners raise issues which turn on factual disputes.

I. MISREPRESENTATIONS OF MATERIAL FACTS

It is disputed whether, after observing DeSantis for over a minute and a half, any officer *reasonably* believed DeSantis was armed. There is a difference between a subjective belief that someone *might* have a weapon and a reasonable belief that a suspect is armed. Petitioners ignore this important distinction and merge the two. Respondents dispute that Sgt. Celli believed, prior to pulling the trigger, DeSantis was armed. Instead, this was a self-serving post-hoc justification. Sgt. Celli's credibility and intent are at issue. Simply because Mr. DeSantis *could have been* armed in the hypothetical does not lead to the conclusion that Sgt. Celli *reasonably* believed that DeSantis was armed. If Sgt. Celli believed DeSantis was a threat because he was armed, why did he wait for almost two minutes to shoot him?

It is also disputed whether the Sage, a less lethal projectile which shattered DeSantis's arm, "deterred his progress," and whether Mr. DeSantis "charged" or

stumbled forward after he was hit and wounded by the Sage.[1]

II. CONSIDERATION OF OTHER FORCE ALTERNATIVES MAY BE PROPER WHERE A SUSPECT IS UNARMED

Petitioners acknowledge that *Deorle v. Rutherford*, 272 F.3d 1272, 1283 (9th Cir. 2001), *cert. denied*, 536 U.S. 958 (2002) sets forth the appropriate standard and permits courts to consider the "availability of other force alternatives" as "a factor" to analyze the reasonableness of the use of force. Petitioners contend lethal force was justified because it was a "split-second" decision made by officers who reasonably believed their lives were at risk. Accordingly, they argue that other alternatives should not have been considered based on Fourth, Sixth and Ninth Circuit precedents.

Factually this argument is flawed. **First**, it is disputed whether the officers reasonably believed their lives were at risk. **Second**, neither the district court nor the Ninth Circuit relied *exclusively* on the alternatives available to the officers. Rather, they were a factor to consider. **Third**, because no officer ever observed a weapon and DeSantis's hands were

---

[1] The issue whether DeSantis was running or walking before he was wounded by the Sage has little significance. An unarmed man, with hands visible, does not become a deadly threat to six officers and a police dog by simply running in their direction.

visible at all times, numerous alternatives were available. Six officers had a variety of non-lethal weapons at their disposal and a dog.

The Ninth Circuit correctly noted that:

> Although officers are not required to use the least intrusive degree of force available, *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994), "the availability of alternative methods of capturing or subduing a suspect **may** be a factor to consider." *Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (citation omitted) (emphasis added).

(Petition, Appendix A at p. 4a)

It goes without saying that an officer confronted with deadly force does not have to consider options before resorting to deadly force. However, the issue becomes more complex if a suspect is unarmed and it is disputed whether the officer reasonably believes the suspect is armed. Here reasonable inferences can be drawn that this was not a split second decision by officers who reasonably believed their lives were at risk.

III. THERE IS NOT A CONFLICT BETWEEN THE CIRCUITS REGARDING THE USE OF DEADLY FORCE

The law regarding the use of deadly force by law enforcement officers has been well established for over 20 years. Principles of self-defense and defense of others goes back to the common law. The reported

decisions are distinguishable by their unique set of facts, yet the legal principles involved have remained constant. Because each case requires a fact-specific analysis, it is overly simplistic to argue a conflict exists between Circuits simply because in some cases qualified immunity is granted and in others it is not. Cases reaching different results can be distinguished by their facts and the "totality of circumstances."

Claims that law enforcement officers used excessive force when making an arrest "should be analyzed under the Fourth Amendment and its 'reasonableness' standard." *Graham v. O'Connor*, 490 U.S. 386, 395 (1989). The standard of review is an objective one. The question is whether a reasonable officer in the same circumstances would have concluded that a threat existed justifying the particular use of force. *Id.* at 396-97. A police officer may use deadly force when the officer has sound reason to believe that a suspect poses an imminent threat of serious physical harm to the officer or others. *Tennessee v. Garner*, 471 U.S. 1 (1985).

Petitioners' reliance on cases from the Sixth and Fourth Circuits is misguided. In *Smith v. Fretland*, 954 F.2d 343, 347 (6th Cir. 1992), an officer shot and killed a suspect, following a high-speed chase. It was undisputed that the suspect was: (1) running through a stop sign; (2) exceeding 90 m.p.h. on public streets; (3) attempts on two occasions of ramming into a police car; (4) fleeing for 2.5 miles; (5) turning his car on a residential lawn; and, (6) intentionally crashing into the front of a police car. *Id.* at 349. The *Fretland*

court held the officer acted reasonably and granted qualified immunity based on a *lack of disputed facts* regarding the preceding events which justified the reasonableness of his actions.

Because of the unique facts of *Fretland*, the Sixth Circuit acknowledged it cannot "give significant weight to *Fretland* in evaluating the specific facts" of other cases. *See, Sigley v. City of Parma Heights*, 437 F.3d 527, 535-36 (6th Cir. 2006). The Sixth Circuit also distinguished *Fretland* based on disputed facts about the circumstances preceding the shooting. When "there is a question regarding whether the officer could reasonably have believed that anyone's life was endangered" by the suspect's actions and the officers did not perceive any "willingness to harm an officer or engage in reckless behavior," summary-judgment on qualified immunity is improper because "based on the plaintiff's version of the facts, a jury could find that no reasonably competent officer would have shot the victim." *Murray-Ruhl v. Passinault*, 246 Fed.Appx. 338, 346, 2007 WL 2478584, *7 (6th Cir. 2007).

The Ninth Circuit distinguished *Smith v. Fretland* when officers fail to issue any warning and have no objectively reasonable belief there is a need for self defense.

> On the facts presented by the Adamses and the disciplinary report of the CHP itself, a jury could find Speers to be an officer off on a mission of his own creation, abandoning his assignment, picking up a buddy for no

> apparent reason except the excitement of the chase, barging in ahead of the police already engaged in pursuit, once attempting to use force against Alan and twice doing so, creating each time a serious hazard for himself as well as Alan, and finally stepping out of his patrol car and, **without warning and without the need to defend himself or the other officers**, killing Alan. Shooting of this sort was established as unconstitutional by *Tennessee v. Garner, supra,* almost twenty years ago. *See Vaughan v. Cox,* 343 F.3d 1323 (11th Cir. 2003), *on remand from* 536 U.S. 953, 122 S.Ct. 2653, 153 L.Ed.2d 830 (2002). No officer acting reasonably in these circumstances could have believed that he could use deadly force to apprehend Alan.

Adams v. Speers, 473 F.3d 989, 993 (9th Cir. 2007) (emphasis added).

In *Elliott v. Leavitt*, 99 F.3d 640, 643 (4th Cir. 1996), the facts preceding the shooting justified the court's ruling on qualified immunity. An intoxicated decedent Elliott pointed a gun at the officers "from only a few feet away with his finger on the trigger" and ignored their command to drop the weapon just prior to the shooting, when his hands were out of sight and the weapon had not been removed. *Id.* at 643-44. The critical point is that Elliott was "threatening the lives of the officers at whom he pointed the gun." *Id.* at 643.

Unlike *Elliott*, here the officers never issued any commands to stop, had Mr. DeSantis's hands in their

view at all times, never saw a gun, and had no information DeSantis had threatened anyone.

IV. THE COURT DID NOT DEVIATE FROM WELL ESTABLISHED PRECEDENT REGARDING THE FOURTEENTH AMENDMENT CLAIM

Notably, the defendants/petitioners did not raise the Fourteenth Amendment claim in their motion for summary adjudication. In its Order the district court held that:

> Parents and children of a person killed by law enforcement officers may bring this substantive due process claim. To prevail on such a claim, Plaintiffs must demonstrate that the officers' use of force "can properly be characterized as arbitrary or conscious shocking, in a constitutional sense." *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1988). To meet this standard, Plaintiffs must show that the officers were motivated by a purpose to cause harm that was unrelated to the legitimate object of their use of force. *See also*, *Porter v. Osborn*, 546 F.3d 1131, 2008 WL 4614334, *5 (9th Cir. 2008). Neither Moving Plaintiffs nor Defendants addressed whether the claims by Dani and/or Adrienne meet this stricter standard in their motions. Accordingly, the Court denies both motions to the extent they seek summary judgment

> on the claims by Dani and/or Adrienne against the Defendant Officers.

(Petition, Appendix B, p. 29a)

Since the decision in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), the law has been clearly established in the Ninth Circuit regarding the test to apply in substantive due process claims alleging violations of the Fourteenth Amendment. *Cf. Moreland v. Las Vegas Metro Police Dept.*, 159 F.3d 365 (9th Cir. 1998) and *Porter v. Osborn*, 546 F.3d 1131 (9th Cir. 2008). The petitioners do not contend that the Ninth Circuit and district court did not apply the correct law to this case. Rather, petitioners contend that they are entitled to qualified immunity because they made a split-second decision to fire believing DeSantis was armed and posed an imminent threat to them. However, the evidence can be reasonably viewed to infer that this was not a split-second decision and the officers did not believe that DeSantis was armed. While it is true that it takes less than a second to pull the trigger, DeSantis had been observed for over a minute and a half, his hands were clearly visible, and no one saw a weapon.

If the officers believed that DeSantis was not armed and wounded, a jury could infer a purpose to cause harm unrelated to a legitimate police purpose. The Ninth Circuit held that: "Genuine issues of material fact remain to be resolved in determining whether the officers were motivated by a purpose to

cause harm that shocks the conscience." (Petition, Appendix A, p. 4a)

CONCLUSION

For the foregoing reasons, this Court should not grant review and the petition should be denied.

Dated: December 29, 2010

Respectfully submitted,

JOHN HOUSTON SCOTT
Counsel of Record for All Respondents
SCOTT LAW FIRM
1388 Sutter Street, Suite 715
San Francisco, CA 94109
Telephone: (415) 561-9601
Facsimile: (415) 561-9609
john@scottlawfirm.net